

# IOWA DEPARTMENT OF NATURAL RESOURCES

## ADMINISTRATIVE CONSENT ORDER

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**IN THE MATTER OF:**

**CITY OF FAIRFIELD**  
**Wastewater Facility No. 6-51-31-0-01**

**ADMINISTRATIVE  
CONSENT ORDER  
NO. 2007-WW-01**

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**TO: City of Fairfield**  
**c/o Honorable Mayor and Council**  
**City Hall**  
**118 S. Main Street, P.O. Box 850**  
**Fairfield, IA 52556**

### I. SUMMARY

This administrative consent order (order) is entered into between the City of Fairfield (City) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order. The City hereby agrees to comply with the requirements in this order for addressing and enforcing industrial contributor violations. In the interest of avoiding litigation, the parties have agreed to the following provisions.

Any questions or response regarding this order should be directed to:

**Relating to Technical Requirements:**

Terry Jones  
Environmental Specialist Senior  
IDNR Field Office #6  
1023 West Madison  
Washington, Iowa 52353  
Ph: 319/653-2135

**Relating to Legal Matters**

Diana L. Hansen  
Attorney at Law  
Iowa Department of Natural Resources  
Henry A. Wallace Building, 502 E. 9<sup>th</sup> St.  
Des Moines, Iowa 50319-0034  
Ph: 515/281-6267

### II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure

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compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

The Department and the City hereby agree to the following statement of facts:

1. The City owns and operates a wastewater treatment facility (WWTF) located in Section 6, Township 71N, Range 9W in Jefferson County, Iowa. This facility consists of a bar screen, grit chamber, comminutor, two primary clarifiers, two oxidation ditches, two final clarifiers, a polishing pond, and two aerated storm water retention basins.

2. The City operates its WWTF pursuant to NPDES Permit No. 6-51-31-0-01, issued by the Department. Treated wastewater is discharged pursuant to this facility's permit. The permit contains effluent limitations for the discharge of pollutants, including but not limited to carbonaceous biochemical oxygen demand (CBOD5), total suspended solids (TSS), and pH. The permit also includes ammonia nitrogen, copper, cyanide and zinc effluent limits and monitoring requirements.

3. Dexter, located at 2211 W. Grimes Avenue in Fairfield, Iowa, produces commercial washers and dryers and discharges process wastewater to the City's WWTF. Dexter is subject to the federal metal finishing categorical standards in 40 CFR Part 433 and is considered a major contributing industry to the City because of its categorical designation. The City and Dexter entered into a signed treatment agreement on January 26, 1998 that allows for the discharge of process wastewater from Dexter to the City's collection system. The monitoring requirements and effluent limitations for Dexter are included in the treatment agreement and in the City's NPDES permit.

4. The treatment agreement lists average and maximum concentration and mass limits for cadmium, chrome, copper, lead, zinc, nickel, cyanide, and silver. Certification statements were signed by representatives of the City and Dexter. Dexter's statement provided in part "I am the duly authorized representative for the major industrial contributor and state that the proposed discharge to the system receiving waste identified above shall not exceed the quantities listed on page two of this form after effective date January 26, 1998."

The City's statement provided "I am the duly authorized representative for the facility owner named above and state that the owner agrees to accept the discharge described on page two for the contractor identified above and accepts responsibility for providing treatment of the volume and quantities described on the reverse in accordance with the provisions of Chapter 455B, Code of Iowa, and the rules of the Department of Natural Resources. This agreement is conditioned upon the industrial contributor complying with

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all applicable standards and requirements of the Department of Natural Resources and the United States Environmental Protection Agency. This agreement is entered for the purpose of identifying pollutants contributed and limiting the quantity contributed, and shall not otherwise be construed to affect local ordinances, sewer service agreements or fee systems entered into between the parties.”

“This agreement may be modified or terminated by the owner of the disposal system if additional pollutants or additional quantities or volumes of pollutants are contributed other than identified on the reverse, or because of any condition that requires either a temporary or permanent reduction or elimination of the accepted contribution.”

5. An inspection of the Dexter pretreatment operation on May 21, 2001 found violations of the oil and grease, chromium, nickel and zinc treatment agreement limits. On June 20, 2001 a Notice of Violation letter and inspection report were sent to the company notifying it of the violations. Dexter was required to ensure consistent compliance with the treatment agreement limits. The City was sent a copy of the letter and inspection report issued to Dexter.

6. On July 17, 2002 an inspector from the Department’s Field Office No. 6 inspected the City’s WWTF. The August 21, 2002 inspection report noted violations by Dexter of pretreatment limits for chromium, nickel, zinc, oil and grease, and pH for the period of June 2001 through May 2002. The inspection report noted that Dexter had numerous violations of the pretreatment limits in the past. The report stated that it was important for the City to review Dexter’s MOR data to ensure compliance with permit limits. The main requirement of the inspection report was that the City ensure compliance from industrial contributors as specified in the City’s NPDES permit. The Notice of Violation cover letter to the report required the City to send the field office a written response explaining the actions the City would take to gain compliance by Dexter with the permit limits.

7. By a letter dated October 22, 2002 to Field Office No. 6, the City proposed an increase in effluent limits for Dexter. The change was requested since the violations by Dexter did not result in effluent limit violations at the City’s WWTF. The City’s letter stated that a report would be forwarded to the Department’s wastewater permits section documenting that no violations occurred at the City’s plant due to the Dexter exceedances. The City sent the Department’s wastewater permits section a letter dated November 6, 2002 requesting a change in the limits for Dexter.

8. By a letter dated November 13, 2002, the Department notified the City that the requested change in limits was denied. The letter provided in part. “Certain wastewater discharges by Dexter Co. are subject to federal categorical pretreatment standards, specifically all process wastewater from the parts washer systems. These federal pretreatment standards are specified in 40 CFR part 433.15 and are the highest concentrations Dexter is legally allowed to discharge. The current treatment agreement

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between Dexter and the city (effective date January 26, 1998) contains limits for metals, cyanide and total toxic organics that are identical to these federal standards. The treatment agreement cannot contain limits less stringent than the applicable federal and state standards and a new agreement with higher limits would not be approved." The Department's letter advised that continued violations of the treatment agreement limits could result in enforcement action.

9. Field Office No. 6 conducted a wastewater inspection of Dexter's pretreatment facilities on December 16, 2003. The December 23, 2003 cover letter and the inspection report noted that for the early part of the inspection period there were violations of metals limits by the company. After March 2003 Dexter eliminated the violations due to a change in treatment procedures. The inspection report discussed the fact that the City was submitting the monthly operating reports for Dexter after the required due date. The City attributed the delay to the time it takes to receive test results back from the University Hygienic Laboratory for Dexter samples.

10. Field Office No. 6 sent the City a Notice of Violation letter dated August 30, 2005. The letter informed the City that the field office had not received monthly operating reports for Dexter and Fairfield Aluminum Castings for June 2005. The City was informed that due to the monitoring requirements for these industries in the City's permit, the City is required to submit this information on monthly operation reports by the 15<sup>th</sup> of the month following the reporting period. The City was informed that failure to timely submit the reports was considered a violation of Department rule 567 IAC 63.7 (455B).

11. On September 20, 2005 Field Office No. 6 staff inspected Dexter's pretreatment operations. For the October 2003 through July 2005 review period, there were four nickel, five chromium, and 12 zinc violations as well as one flow exceedance. A chromium sample for July 2005 tested at 40 mg/L, greatly exceeding the maximum concentration permit limit of 2.77 mg/L. The 30 day average for July 2005 was 10.00 mg/L, which exceeded the 30 day average concentration limit of 1.71 mg/L. Also during July 2005, Dexter had a 30 day average of 0.2 lb/day, which exceeded the 30 day average mass limit of 0.185 lb/day, and a maximum of 0.8 lb/day, which exceeded the maximum mass limit of 0.300 lb/day.

The October 31, 2005 Notice of Violation letter sent with the report informed Dexter that the exceedances were in violation of the treatment agreement with the City and subrule 567 IAC 62.1(6). The Notice of Violation letter and the inspection report noted that Dexter's monthly operating reports were still not being submitted timely, in violation of subrule 567 IAC 63.7(455B). The City was informed that formal enforcement action would be taken against the City as well as against Dexter. The reason given for such action was the City's lack of effort to achieve compliance by the company.

12. From August 1, 2005 through August 31, 2006 additional violations of the treatment agreement limits have occurred at this facility. There were violations of the

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average and maximum concentration limits for chromium for August and September 2005. Daily maximum concentration zinc violations in April and May 2006 were reported. However, the test results for April and May 2006 were questionable. Split samples were tested by two separate laboratories, the University Hygienic Laboratory and Test America. There was a substantial discrepancy concerning Test America test results, calling into question whether the violations showed by Test America results actually occurred for these months.

13. The City proposed payment of \$7,500.00 toward a Supplemental Environmental Project (SEP). The City offered to install a fine bubble air diffuser in the east and west storm equalization basins to prevent odors and to allow the storm sewage sludge to be stabilized while waiting to be returned to the plant for processing. History has shown that the City has received odor complaints in the past from these storm equalization basins. The estimated total cost of this project is in excess of \$17,000.00 if contracted. However, to conserve financial resources, the City will do much of the fabricating and installation for a total cost with blower and diffusers of \$12,000.00. Equipment would be installed by the wastewater staff and in operation by May 31, 2007. The City elected to do as much in-house work as possible to save funding needed for the elimination of sanitary sewer overflows (SSO's). The originally estimated Grease Lightning lift station upgrade was \$200,000.00 but the contracted price is \$428,000.00 with a completion date set at August 31, 2007. The City also recently purchased \$96,000.00 of flow monitors and a sewer camera to help find and eliminate SSO's. Therefore, this fine bubble diffuser SEP will promote community enhancement and allow other financial resources to be applied in eliminating SSO's.

14. The City was issued Administrative Order No. 86-WW-20 on May 30, 1986 and Administrative Order No. 88-WW-10 on February 26, 1988 due to effluent limit violations and violations by Dexter of treatment agreement effluent limits. A district court consent order was entered into on October 25, 1991 by the Department, the City, and Dexter due to NPDES permit limit violations by the City and violations of treatment agreement limits by Dexter.

#### **IV. CONCLUSIONS OF LAW**

The parties agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.175(1) provides in part: If there is substantial evidence that any person has violated or is violating any provision of this division or chapter 459, subchapter III, or of any rule established or permit issued pursuant thereto; then:

1. The director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease.

2. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. Iowa Code

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section 455B.183 prohibits the operation of a wastewater disposal system without a permit from the Department.

3. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission to promulgate rules relating to the operation of waste disposal systems, including rules relating to monitoring and reporting requirements. The Commission has done so at 567 IAC chapters 60- 64. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. Subrule 64.7 specifies the conditions that are to be included in a permit, including applicable effluent limitations in chapters 61 and 62 of the rules.

4. Rule 62.4(455B) adopts by reference federal regulations for pretreatment. Subrule 62.4(33) adopts 40 CFR Part 433, the federal regulation for the metal finishing point source category. Dexter and the City entered into a treatment agreement incorporating the limits required by this subrule. These metals limits were incorporated into the City's NPDES permit. Dexter has violated subrule 62.4(33) and the federal categorical standards by exceeding various metals limits in the treatment agreement and the City's NPDES permit, as detailed in the Statement of Facts.

5. Subrule 62.1(6) provides that the "discharge of wastewater into a publicly owned treatment works or a privately owned domestic sewage treatment works in volumes or quantities in excess of those to which a major contributing industry is committed in the treatment agreement described in 567—subrule 64.3(5) is prohibited." The inspection reports and notices of violation for the City and Dexter establish that the discharges from Dexter to the City have been in violation of this subrule. Since the pretreatment limits for Dexter are included in the City's NPDES permit, effluent limit violations by Dexter are considered violations by the City.

6. Rule 63.7 pertains to the submission of records of operation. "Records of operation shall be submitted to the department within 15 days following the close of the reporting period specified in 63.8(455B) and in accordance with monitoring requirements derived from this chapter and incorporated in the operation permit." The City has been in violation of this rule provision due to the submittal of monitoring test results for Dexter after the due date for submittal of the monthly operation report.

**V. ORDER**

THEREFORE, the Department hereby orders and the City consents to do the following:

1. The City agrees to comply with all NPDES and treatment agreement limits. The City agrees to limit the levels of pollutants from Dexter to the City to the limits set forth in the City's permit. The City agrees to submit monthly operation reports containing all required monitoring test results timely.

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2. The City agrees to adopt an enforcement response plan by City ordinance and to submit the completed enforcement plan to Terry Jones, Iowa Department of Natural Resources, Field Office No. 6, by March 1, 2007. The plan is required to identify the actions the City will take in addressing future violations from their industrial users. The City is required to show due diligence in addressing all violations from all industrial users listed in the City's NPDES permit. The plan must address all steps the City will take to ensure that monthly monitoring reports for all industrial users are submitted to the Department by the 15<sup>th</sup> day after the reporting period.

3. An administrative penalty of \$10,000.00 is assessed. The penalty shall be paid to the Department within sixty days after the City's receipt of the order signed by both parties.

In lieu of payment of the full administrative penalty, the City may elect to pay \$2,500.00 to the Department as an administrative penalty and \$7,500.00 toward a Supplemental Environmental Project (SEP). The City has agreed to pay \$7,500.00 toward the following SEP. The City agrees to install a fine bubble air diffuser system in the west and east storm equalization basins by May 31, 2007 to reduce or eliminate odors from the wastewater pumped to the basins during rain events. The City is required to pay the \$2,500.00 penalty to the Department within sixty days after the City's receipt of the order signed by both parties. Documentation of completion of the SEP and the payment of the SEP amount toward the project is required to be furnished to Terry Jones, Iowa Department of Natural Resources, Field Office No. 6, and to Diana Hansen, Iowa Department of Natural Resources, within 30 days of completion of the project. Upon notification of completion of the SEP, Field Office No. 6 will conduct an inspection to confirm completion of the SEP.

## **VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with an administrative penalty. The administrative penalty assessed by this order is determined as follows:

**a. Economic Benefit.** The violations of the treatment agreement limits by the industry could have been avoided by better oversight over the industry by the City. By not enforcing the treatment agreement limits or insisting that the company construct upgrades to its pretreatment equipment, the City benefits by retaining an industry and jobs in the community. Despite this benefit to the City, no amount will be assessed for this factor.

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**b. Gravity of the Violation.** One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violations. As indicated above, substantial civil and criminal sanctions are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Maintaining compliance with water pollution laws, including pretreatment requirements, is a major program priority of the federal and state pollution control agencies.

The Department recognizes that the City's effluent from its WWTF meets the NPDES permit effluent limit requirements and that there has been no apparent environmental impact to the receiving stream. Although the City's biosolids would contain the metals from the Dexter discharge, the City's sludge application data indicates compliance with sludge limitations. Despite the City's compliance with effluent limitations and biosolids requirements, the continuing failure by the City to enforce the requirements in its NPDES permit concerning its treatment agreement with Dexter makes this a serious matter. The amount of \$5,000.00 is assessed for this factor due to multiple violations.

**c. Culpability.** The City was advised of its obligation to enforce the treatment agreement limits for Dexter by inspection reports and cover letters from 2002 through 2005. Despite the Department's efforts to gain compliance with the treatment agreement limits, the City has failed to enforce those limits over the years and Dexter continues to violate its treatment agreement limits. This is aggravated by the fact that the City was issued two orders in 1986 and 1988 by the Department and entered into a state district consent order with the Department in 1991 concerning, in part, similar pretreatment violations by Dexter. The amount of \$5,000.00 is assessed for this factor due to multiple violations.

## **VII. WAIVER OF APPEAL RIGHTS**

Iowa Code section 455B.175, and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This order is entered into knowingly by and with the consent of the City. By signature to this order, all rights to appeal this order are waived.


## **VIII. NONCOMPLIANCE**

Compliance with Section "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an

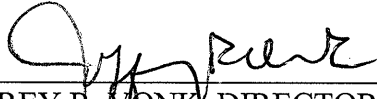


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administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

  
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ED MALLOY, MAYOR  
MAYOR OF FAIRFIELD

Dated this 8 day of  
January, 2008<sup>7</sup>

  
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JEFFREY R. MONK, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 10 day of  
January, 2008<sup>7</sup>

City of Fairfield- NPDES Permit No. 6-51-31-0-01, Field Office No. 6- Terry Jones,  
Legal Services- Diana L. Hansen, U.S.E.P.A. Region VII, I.B.2.a., I.B.2.c., I.C.4.